

## A. General Terms and Conditions for the provision of IT services

Status: January 2023

### § 1 Scope of application, deviating conditions of the Customer

- 1.1 These General Terms and Conditions for the Provision of IT Services ("**GTC IT Services**") apply to Gesellschaft für Organisationsberatung und Softwareentwicklung mbH (hereinafter referred to as "**GFOS**") and apply in particular to the consulting, training, support, installation, implementation, maintenance, support and/or customisation services for hardware and software products (hereinafter referred to as "**IT Services**") offered by it.
- 1.2 These GTC IT Services shall apply exclusively to entrepreneurs within the meaning of section 14 of the German Civil Code ("**BGB**"), i.e. to natural or legal persons who, when concluding a legal transaction, act in the exercise of their commercial or independent professional activity. The term "**Customer**" is hereinafter used to refer to any company that concludes a contract with GFOS for the provision of IT services (hereinafter referred to as the "**IT Service Contract**") in accordance with these GTC.
- 1.3 The business relationship with the Customers of GFOS concerning IT services shall be governed exclusively by the General Terms and Conditions of GFOS as well as any individual contractual agreements made with the Customer. Deviating general terms and conditions of the Customer - in particular general terms and conditions of purchase - shall only apply if and insofar as GFOS expressly acknowledges them in writing. The silence of GFOS with regard to such deviating general terms and conditions of business shall not be deemed to be recognition or consent, even in the case of future contracts. If GFOS's General Terms and Conditions have been introduced into the business with the Customer, they shall also apply to all further business relations of the same kind between the Customer and GFOS, unless expressly agreed otherwise in writing.

- 1.4 These GTC IT-Services shall apply instead of any general terms and conditions of the Customer even if, according to these, the acceptance of the order is provided for as unconditional acceptance of the general terms and conditions or GFOS performs after the Customer has pointed out the validity of its general terms and conditions, unless GFOS has expressly waived the validity of these GTC-IT-Services in writing.
- 1.5 The documents referred to in these GTC IT Services, in particular the service description and/or the offer of GFOS for the execution of the specific IT services, are integral parts of the IT service contract concluded between the parties. Unless expressly stated otherwise, references to documents shall refer to the version of the documents in force at the time.
- 1.6 In the absence of an express provision in the IT service contract, GFOS shall provide the IT services for the Customer as a support service on a service contract basis within the meaning of sections 611 ff. BGB, without owing a concrete performance outcome.
- 1.7 If and insofar as GFOS has agreed a specific performance outcome in the IT service contract for the provision of the IT services, e.g. for the creation of customised software and/or hardware adaptations as part of a hardware and/or software implementation, the "**Supplementary Terms and Conditions for IT Services** under a Contract for **Work and Services**" printed after these GTC IT Services shall apply in addition.

### § 2 Conclusion of contract, subject matter of contract and scope of services

- 2.1 All offers of GFOS are subject to changes and are non-binding, unless they are marked as binding. If the Customer places an order on the basis of the non-binding offers, a contract shall

- only be concluded - also in current business transactions - through the written order confirmation by GFOS (also sufficient by e-mail or fax), if the Customer requests such a confirmation. In all other cases, the contract shall be concluded by execution of the delivery/service. If an order confirmation is issued by GFOS, this alone shall be decisive for the content of the contract, in particular for the scope of the IT services and the delivery time.
- 2.2 The subject of the IT service contract are the IT services specified in the offer or in a separate service description or service level agreement, not a specific (economic) success. GFOS shall provide the IT services in accordance with the generally recognised rules of technology and in compliance with the agreed requirements.
- 2.3 If the factual or legal situation changes after delivery of the final work result, GFOS shall not be obliged to draw the client's attention to any changes or to any consequences resulting therefrom.
- 2.4 Insofar as GFOS has to present results in writing within the framework of the provision of services, this written presentation alone shall be authoritative. Drafts of written representations shall not be binding. Oral statements and information provided by GFOS shall only be binding if they are confirmed in writing by GFOS. Insofar as GFOS makes statements and provides information outside the scope of the order placed, these shall always be non-binding.
- 2.5 A guarantee shall only be deemed to have been assumed by GFOS if GFOS has designated a property and/or a performance outcome as "legally guaranteed" in writing.
- 2.6 Data supplied by third parties at the request or instigation of the Customer or by the Customer itself shall be the sole responsibility of the Customer and shall only be checked for plausibility without an express order and shall not be validated by GFOS. The conclusions and recommendations to be derived from the IT services of GFOS shall be made to the best of our knowledge and in accordance with recognised rules of technology.
- 2.7 Unless otherwise agreed in writing or in text form, GFOS may, at its own discretion, use competent subcontractors for the execution of the order.
- 2.8 GFOS shall examine any requests for changes made by the Customer with regard to the contractually agreed IT services and take them into account at its own discretion, insofar as this is possible within the framework of the capacities and within the framework of the effort and time planning. Insofar as such changes affect the terms of the contract, the parties shall agree on an adjustment of the contract, in particular with regard to remuneration and performance time/periods. If no agreement is reached on this, GFOS shall not be obliged to fulfil the Customer's request for changes to the agreed IT services.
- 2.9 Insofar as GFOS owes maintenance or support for hardware and/or software within the scope of the IT services and no deviating provisions have been made in the IT service contract, the following shall apply:
- GFOS shall not be obliged to carry out ongoing adaptation of the hardware and/or software to changing legal framework conditions (i.e. mandatory laws, legal ordinances, regulatory requirements) or due to changing requirements in the sphere of the Customer.
- The patches/updates/upgrades/releases to be provided by GFOS as part of the maintenance or support, if applicable, shall be made available to the Customer in the form of the object code at the reasonable discretion of GFOS (i) as a download in electronic form via the Internet or (ii) on a data carrier customary in the market as soon as GFOS or the respective manufacturer has released them. The correct and proper installation of the patches/updates/upgrades/releases is the responsibility of the Customer. For the installation, the installation instructions described in the product description and/or application documentation of the manufacturer, in particular the hardware and software environment that must be

available at the Customer's premises, must be observed.

### § 3 Performance times, service time, delay, response and resolution times

- 3.1 Binding performance dates and times must be expressly agreed in writing. A transaction for delivery by a fixed date shall only be deemed to exist if GFOS has expressly confirmed such transaction in writing or if the legal requirements for a transaction for delivery by a fixed date are met. Insofar as a binding service date has been agreed and the Customer cancels this within a period of less than three (3) working days before the agreed service date, GFOS shall be entitled to charge the Customer a cancellation fee amounting to 80% of the net remuneration plus any statutory value added tax for the cancelled IT services and to demand reimbursement of any travel and accommodation costs which can no longer be cancelled. The client shall be at liberty to prove that GFOS has incurred no damage or less damage than the asserted flat-rate cancellation fee as a result of the cancellation of the appointment.
- 3.2 Unless otherwise agreed, GFOS shall only be obliged to perform the IT services commissioned in each case during the service hours (Mo-Thu. 8 a.m. - 5 p.m., Fr. 8 a.m. - 1.30 p.m., except on public holidays at the registered office of GFOS as well as on 24 December and 31 December (hereinafter referred to as "**service hours**"). IT services which are performed outside the service hours shall be remunerated plus reasonable surcharges for overtime, night work, weekend work and work on public holidays per hour or part thereof per employee. Appropriateness shall be assumed in particular if the corresponding surcharges result from collective agreements or other applicable company regulations, which GFOS shall prove to the Customer in a suitable form on request if recourse is made to collective agreement rates or rates otherwise regulated by the company.
- 3.3 If no specific dates have been agreed for the provision of IT services by GFOS, but a period has been agreed, this period shall not begin until all details of the execution of the order have been clarified and all other preconditions

to be fulfilled by the Customer have been met, in particular agreed advance payments have been made, information required for the provision of services has been provided, etc. The same shall apply to performance dates. The same applies to performance dates. If the Customer has requested changes after the order has been placed, a new reasonable performance period shall begin with the confirmation of the change by GFOS.

- 3.4 If GFOS is in default of performance, the Customer must first set GFOS a reasonable grace period of at least 14 working days (working days being understood to mean Monday - Friday) for performance, unless this is unreasonable in the individual case. If this period expires fruitlessly, claims for damages due to breach of duty - for whatever reason - shall only exist in accordance with this § 3 and § 8. GFOS shall not be in default as long as the Customer is in default with the fulfilment of obligations towards GFOS, including those from other contracts.
- 3.5 Close cooperation between the client and GFOS is necessary for the provision of services. Both parties shall therefore inform each other of all circumstances from their respective spheres which may have an effect on the provision of services by GFOS. The project and success responsibility for IT projects remains with the client. Irrespective of this, however, GFOS shall be responsible for the contractual provision of the IT services owed by GFOS.
- 3.6 If binding response and/or recovery times are agreed in the IT service contract, the following provisions shall apply in addition:

Response time is the period of time within which the execution of the IT services is started (e.g. with the rectification of a fault). The period starts with the receipt of the corresponding message by GFOS or the occurrence of an agreed event within the service time and runs exclusively during the agreed service time. If a message is received or an agreed event occurs outside the agreed service time, the response time begins at the start of the next service time.

Resolution time is the period of time within which GFOS endeavours to finally process a malfunction or other work order, if necessary also by means of reasonable workarounds, within the framework of the technical and operational possibilities of GFOS. Solution times shall run exclusively during the agreed service time. In the case of solution times, such times shall not be taken into account which, despite reasonable efforts by GFOS, lead to delays in the provision of the service, such as: outstanding acts of cooperation by the Customer, delivery times for necessary spare parts (insofar as no stockpiling has been expressly agreed) and, insofar as manufacturer bug fixes to hardware/software are necessary, the times until the corresponding provision by the manufacturer. In these aforementioned cases, GFOS shall also use its best efforts to identify such interim measures as will keep any adverse effects on the Customer as low as possible.

#### § 4 Obligations of the Customer to cooperate

- 4.1 The client shall appoint a contact person to GFOS as the central contact person in all project matters for the agreed performance period, who can make binding decisions for the client during the performance of the contract and is available for the exchange of necessary information. Necessary decisions by the Customer shall be brought about by the contact person without delay and jointly documented by the parties in writing, if possible immediately afterwards.
- 4.2 The Customer shall ensure that all cooperation services required for the provision of the IT Services are provided in good time, in full and free of charge for GFOS.
- 4.3 The Customer shall ensure that employees of the Customer who support GFOS in the provision of the Services are available at the agreed times. The Customer shall be responsible for ensuring that its employees have the necessary knowledge, skills and experience to perform the tasks assigned to them.
- 4.4 The Customer shall be obliged to support GFOS appropriately within the framework of the provision of services and in particular to
- a) create all conditions in the area of its sphere of operation which are necessary for GFOS to provide the IT services properly. Unless otherwise agreed, the Customer shall in particular
  - a) provide GFOS with all documents and further information necessary for the execution of the IT Services in good time;
  - b) bring to the attention of GFOS all processes and circumstances which may be of significance for the performance of the IT Services; this shall also apply to documents, information, processes and circumstances which only become known during the activity of GFOS;
  - c) confirm, at the request of GFOS, the completeness of the documents submitted and the further information as well as the information and declarations given in a written declaration specified by GFOS;
  - d) make decisions incumbent upon him regarding the implementation and content of IT services without delay and inform GFOS thereof and examine proposals for changes made by GFOS without delay;
  - e) inform immediately about the legal framework conditions originating from his sphere, insofar as specific requirements for the provision of the IT Services result from this;
  - f) provide GFOS with rooms and workplaces as required within the scope of the provision of services and to a reasonable extent;
  - g) grant GFOS employees remote access (during the Customer's normal office hours) to the Customer's computers for the provision of services (remote access).
  - h) Further obligations of the Customer to cooperate and provide are regulated in the offer or a separate service description, if applicable.
- 4.5 As long as the Customer's cooperation services are not provided in accordance with the contract, GFOS shall be exempt from its obligation to perform in whole or in part to the

extent that GFOS is dependent on the respective cooperation or provision. GFOS shall not be responsible for disruptions to performance caused by the Customer's failure to provide cooperation services in accordance with the contract. Additional expenses incurred by GFOS due to the non-contractual provision of the cooperation services can be invoiced separately by GFOS according to expenditure. Any further claims of GFOS shall remain unaffected.

- 4.6 The cooperation services to be provided by the Customer shall constitute a genuine contractual obligation towards GFOS and not merely an obligation. If the Customer does not provide the cooperation services to be provided by him or does not provide them in accordance with the contract and if this has an effect on the IT services to be provided by GFOS, GFOS shall be released from the obligation to provide the IT services concerned. The corresponding performance deadlines shall be postponed by an appropriate period of time. GFOS shall be separately remunerated for any additional expenditure incurred as a result, without prejudice to further rights on the basis of the agreed conditions. Further claims remain unaffected by this.

#### **§ 5 Completion and Completions of the IT Services, Performance Failures**

- 5.1 Unless otherwise agreed, GFOS shall notify the Customer of the completion of the IT Services. Such notification shall also be deemed to be the transmission of any agreed performance result, report, statement, messages via a ticket system, etc.. The IT Services shall thereby be deemed to have been provided and performed.
- 5.2 The Customer shall inform GFOS immediately in writing or in text form if he realises that a service has not been provided by GFOS in accordance with the contract. In doing so, it shall specify the non-contractual performance of the service to GFOS in as much detail as possible.
- 5.3 Insofar as GFOS is responsible for the service not being provided in accordance with the contract and the Customer has complied

with its duty to inform in accordance with § 5.2, GFOS shall initially be entitled and obliged to provide the affected service in accordance with the contract within a reasonable period of time without additional costs for the Customer, insofar as this subsequent provision of the service is possible and is not associated with disproportionate costs for GFOS.

- 5.4 Insofar as it is not possible to make up for the service provision not in accordance with the contract or is refused by GFOS due to disproportionate costs or is not successful in essential parts for reasons for which GFOS is responsible, even within a reasonable period of grace set by the Customer, the Customer shall be entitled to terminate the IT service contract without notice for good cause. In this case GFOS shall be entitled to remuneration for the IT services provided until the termination takes effect. However, the claim to remuneration shall lapse for those IT services which are of no interest to the Customer as a result of the termination. Within two (2) weeks of receipt of the termination, the Customer shall substantiate to GFOS in writing which IT services this applies to.
- 5.5 Further claims due to qualitative deficiencies in performance are excluded. This exclusion shall not apply in the event of intent or gross negligence on the part of GFOS or in the event of injury to life, limb or health.
- 5.6 The claims due to defaults in performance shall become statute-barred after one year from the statutory commencement of the limitation period. The above limitation period shall not apply in the event of default in performance due to intent or gross negligence on the part of GFOS or in the event of injury to life, limb or health. In these cases, the statutory limitation period shall apply.
- 5.7 If GFOS provides IT services in the determination or elimination of notified/alleged performance disruptions without being obliged to do so, GFOS shall be entitled to demand reasonable remuneration from the Customer according to expenditure if the Customer has failed to recognise the non-existence of the performance disruption due to at least gross negligence.

- 5.8 Insofar as the defect in performance is an infringement of third party property rights, § 9 shall apply.
- 5.9 The acknowledgement of breaches of duty must always be in writing.

#### § 6 Remuneration, terms of payment

- 6.1 The remuneration for the IT services provided shall be based on the IT service contract. Unless otherwise agreed therein, the Customer shall owe remuneration according to expenditure in the form of daily rates in accordance with the GFOS price list generally valid at the time of conclusion of the contract. In the case of remuneration on a time and material basis, GFOS shall be entitled to make this payable at least monthly in arrears after the services have been rendered, including in the case of partial services, and to invoice it. If no agreement has been reached on remuneration, GFOS shall be entitled to the remuneration customary in the industry for the IT services provided, unless certain IT services have been expressly agreed as being free of charge.
- 6.2 If remuneration on a time and material basis has been agreed and nothing to the contrary has been stipulated in the IT service contract, the following shall also apply:

- Set-up times, travel costs, material costs, expenses and/or other incidental costs are not included in the daily rates and will be invoiced additionally. Waiting times of GFOS employees for which the Customer is responsible shall be remunerated as working times. GFOS must, however, take into account what GFOS has saved by not providing the IT services or has acquired or maliciously refrained from acquiring by using the IT services elsewhere.

-The daily rates cover a working time of eight (8) hours and billing is on an hourly basis. Any additional work per day shall be invoiced pro rata. The agreed surcharges shall be added for work on weekends and public

holidays as well as for work performed outside service hours. The travel times of GFOS employees to and from the Customer's place of business as well as IT services which GFOS provides at other locations at the Customer's request shall be charged by GFOS for the travel time of the respective employees at the agreed daily rate.

-Insofar as GFOS submits proofs of expenditure/hours to the client, the latter shall check these without delay and sign them off to indicate agreement at the latest within fourteen (14) calendar days of receipt and thus release them. If the Client does not agree with the evidence provided, the Client shall set out any objections to the evidence in detail in writing within this period. The parties will then immediately attempt to clarify the matter. Insofar as the Customer does not raise any objections to the evidence within the aforementioned period, the effort/hours records shall be deemed to have been approved if and insofar as GFOS has referred to the fiction of approval in the evidence.

- 6.3 All prices of GFOS are always in EURO plus VAT to be borne by the Customer in the respective legally prescribed amount. The sales tax shall be shown separately on the invoice. The prices as well as price surcharges shall be determined according to the GFOS price list generally valid at the time of conclusion of the contract, unless otherwise agreed.

- 6.4 GFOS shall be entitled at its reasonable discretion (section 315 BGB, subject to judicial review pursuant to section 315 para. 3 BGB) to unilaterally increase the prices for the IT services in the event of an increase in manufacturing, material and/or procurement costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to statutory requirements, environmental regulations, currency regulations, changes in customs duties and/or other public charges if these directly or indirectly



influence the costs of the contractually agreed IT services and increase by more than 5% and if there are more than 2 months between conclusion of the contract and delivery/service. An increase in the aforementioned sense is excluded insofar as the cost increase in individual or all of the aforementioned factors is offset by a cost reduction in other of the aforementioned factors in relation to the total cost burden for the delivery/service (cost netting). If the aforementioned cost factors are reduced without the cost reduction being offset by an increase in other of the aforementioned cost factors, the cost reduction shall be passed on to the Customer in the form of a price reduction. If the new price is 25% or more above the original price as a result of GFOS's aforementioned right to adjust prices, the Customer shall be entitled to withdraw from contracts not yet fully performed with regard to the part of the contract not yet performed. However, he may only assert this right immediately after notification of the increased remuneration.

- 6.5 Unless otherwise agreed, GFOS shall be entitled, in the event of an expected execution period of more than 90 days, to demand an advance payment of 1/3 of the agreed total net remuneration upon conclusion of the contract plus VAT.
- 6.6 Invoices from GFOS are payable within 14 days of receipt of the invoice without any deduction (e.g. discount), unless otherwise agreed in writing. The date of payment shall be the date on which the money is received by GFOS or credited to the account of GFOS.
- 6.7 The Customer shall only have a right of retention or right of set-off with regard to counterclaims that are not disputed or have been legally established. A right of retention may only be exercised by the Customer insofar as his counterclaim is based on the same contractual relationship.

#### § 7 Rights of Use, Passing on of Work Results

- 7.1 All contractually agreed IT services and work results of GFOS are intended exclusively for the Customer and for use for the purposes specified in the IT service contract.

7.2 GFOS shall remain the owner of all work results which are or can be protected by industrial property rights or positions similar to industrial property rights of whatever kind (e.g. patent rights, trademark rights, utility model and design rights, copyrights) and whether registered or not, and to which GFOS is entitled at the time of conclusion of the IT service contract or which are created by GFOS (or by third parties on behalf of GFOS) after conclusion of the IT service contract (hereinafter referred to as "**work results**"). The same shall apply to adaptations, changes and further developments of the work results.

7.3 Upon full payment of the agreed remuneration, GFOS shall grant the Customer a non-exclusive, permanent, non-transferable right to use the work results specially created for the Customer under the IT service contract and identified as such in the offer or in a separate service description, insofar as this results from the purpose of the IT service contract. The right of use is limited to use in the Federal Republic of Germany as well as to the country of destination additionally agreed between the parties, if any, in which the work results are to be used.

7.4 The disclosure of work results (or excerpts of work results - whether in draft or final version) or information about the activities of GFOS for the Customer to a third party requires the written consent of GFOS, unless (i) the purpose of the IT service contract already results in the consent to disclosure or information or (ii) the Customer is obliged to disclose or provide information due to a law or an official order.

7.5 Insofar as the work results contain standard software of a third party (hereinafter referred to as "**Third Party Software**"), the use of this Third Party Software shall be subject to the corresponding licence conditions of the respective software manufacturer. The Customer undertakes to comply with the respective licence conditions in full and at all times. The licence conditions applicable to the respective third-party software are either attached to the offer of GFOS or GFOS refers in the offer to the website of the software manufacturer via which the Customer can

view and download the licence conditions. For the use of third-party software, it may also be necessary for the Customer to declare his consent to the validity of the licence conditions of the respective software manufacturer during the installation process. Insofar as the Customer has commissioned GFOS with the installation of the third-party software in accordance with a separate order, GFOS shall be authorised by the Customer to issue such a declaration of consent on behalf of the Customer and thereby bindingly oblige the Customer to comply with the licence conditions vis-à-vis the software manufacturer.

## § 8 Liability, exclusion and limitation of liability

- 8.1 GFOS shall be liable without limitation for damage caused intentionally or by gross negligence, for damage resulting from injury to life, limb and health, as well as for damage that gives rise to a duty of replacement in accordance with section 1 of the German Product Liability Act ("ProdHaftG").
- 8.2 In the event of simple negligence, GFOS shall only be liable insofar as it involves a breach of material contractual obligations, the fulfilment of which is a prerequisite for the proper performance of the IT service contract and on the observance of which the Customer was entitled to rely. Otherwise liability for damage caused by slight negligence is excluded. § 8.1 remains unaffected.
- 8.3 In the event of a simple negligent breach of material contractual obligations by GFOS, the obligation to pay compensation shall be limited to the foreseeable damage typical for the contract. The foreseeable damage typical of the contract is the damage which GFOS foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which GFOS should have foreseen by exercising due care. Indirect damages and consequential damages which are the consequence of a service not being provided in accordance with the contract are also only eligible for compensation insofar as such damages are typically to be expected when using the IT services as intended. § 8.1 remains unaffected.
- 8.4 The liability of GFOS in the cases of § 8.3 shall be limited to two hundred and fifty thousand euros (€ 250,000.00) per case of damage. If, in the opinion of the client, the foreseeable contractual risk not only insignificantly exceeds this maximum liability amount, GFOS shall be prepared to agree an appropriate higher liability amount in return for corresponding remuneration for the assumption of risk, provided that insurance cover can be agreed for this.
- 8.5 In the event of data loss or data destruction, GFOS shall only be liable insofar as GFOS has caused the destruction intentionally, through gross negligence or due to a breach of a material contractual obligation. The liability of GFOS for the simple negligent breach of an essential contractual obligation shall be limited in the above case to the amount of the damage that would also have arisen in the event of proper data backup by the Customer.
- 8.6 If several claimants under the IT service contract bring claims against GFOS arising from a simple negligent breach of essential contractual obligations (§ 8.3) by GFOS, the maximum liability amount determined in § 8.4 shall apply to the relevant claims of all claimants in total. The maximum liability amount shall only be available to the Customer and the other claimants jointly and once (joint and several creditor, section 428 BGB). section 334 BGB applies accordingly.
- 8.7 The above provisions on the limitation of liability shall also apply to the personal liability of the employees, representatives and bodies of GFOS.
- 8.8 Claims for damages and claims for reimbursement of futile expenses of the Customer shall become statute-barred within one (1) year; with regard to the beginning of the limitation period, section 199 para. 1 BGB shall apply. This shall not apply to claims for damages and claims for reimbursement of futile expenses due to injury to life, body or health, in the case of claims



under the Product Liability Act and in the case of breach of a quality guarantee. Furthermore, this shall not apply to claims based on an intentional or grossly negligent breach of duty by GFOS or a legal representative or vicarious agent of GFOS.

### § 9 Third party property rights

9.1 GFOS shall ensure that no third party rights exist which impede, restrict or exclude the contractual use by the Customer of the work results produced by GFOS under the IT service contract. Should third parties nevertheless assert justified claims for infringement of their rights and the Customer be legally prohibited from using the work results in whole or in part, GFOS shall be liable to the Customer as follows if and insofar as GFOS is to be blamed in this respect:

9.2 GFOS shall only be obliged to deliver the IT Services as well as the achieved work results free of rights or claims of third parties which (i) hinder, restrict or exclude the contractual use of the IT Services or the work results, (ii) which are based on industrial property rights or other intellectual property and (iii) which GFOS was aware of at the time of conclusion of the contract or was not aware of as a result of gross negligence, provided that the right or claim is based on industrial property rights or other intellectual property

- a) according to the law of the Federal Republic of Germany, provided that the Customer of GFOS has its registered office or branch office there; or
- b) under the law of a third country only if GFOS has expressly agreed in writing with the Customer on the use of the IT services of GFOS and work results in this third country.

9.3 If a third party asserts justified claims against the Customers of GFOS in respect of work results that are the subject matter of the contract in accordance with § 9.1 above, GFOS shall be liable to the Customer within the period specified in § 8.8 as follows:

- a) At GFOS's discretion, GFOS shall first attempt to either obtain a right

of use for the work results concerned at GFOS's expense or modify the work results in such a way that the property right is not infringed. If GFOS is unable to do so on reasonable terms, the Customer shall be entitled to its statutory rights, which shall, however, be governed by these GTC IT Services.

- b) The Customer is obliged to inform GFOS immediately in writing of the claims asserted by the third party, not to acknowledge an infringement and to reserve all defensive measures and settlement negotiations for GFOS. If the Customer discontinues the use of the IT services or the work results for reasons of mitigation of damages or other important reasons, he shall be obliged to point out to the third party that the discontinuation of use does not constitute an acknowledgement of an infringement of property rights. If, as a result of the use of the IT services or the work results, the Customer is attacked by third parties on the grounds of infringement of property rights, the Customer undertakes to inform GFOS of this without delay and to give GFOS and, if applicable, any affected upstream suppliers of GFOS (e.g. software manufacturers from whom GFOS has obtained third-party software) the opportunity to participate in any legal dispute. The Customer shall support GFOS and, if applicable, GFOS's upstream suppliers in every respect in the conduct of any such legal dispute. The Customer shall refrain from actions that could impair the legal position of GFOS or GFOS's upstream suppliers.

9.4 The obligation of GFOS under § 9.2 and § 9.3 does not extend to cases,

- a) in which the infringement of property rights results from the fact that GFOS has oriented the work results according to information or

- b) other data which the Customer has provided or specified to GFOS, or in which the infringement of property rights is caused by an application by the Customer not foreseeable by GFOS or by the fact that the work results are modified by the Customer or mixed or used together with products not supplied by GFOS or IT services provided, or
- c) in which the infringement of property rights is caused by the use of the supplies or IT services in an environment of use and application which has not been agreed.

9.5 The liability of GFOS according to § 8 remains unaffected.

#### § 10 Confidentiality, data protection

- 10.1 The Customer undertakes to keep confidential such facts, documents and knowledge which come to his knowledge in the course of the implementation of the business relationship with GFOS and which contain technical, financial, business or market-related information about the company GFOS, provided that GFOS designates the respective information as confidential or has an obvious interest in keeping it confidential (hereinafter collectively referred to as confidential information). The Customer shall use the Confidential Information exclusively for the purpose of implementing and executing the contractual relationship with GFOS in accordance with the contract and the individual contracts based thereon.
- 10.2 The disclosure of confidential information by the Customer to third parties requires the express and prior written consent of GFOS.
- 10.3 The duty of confidentiality pursuant to § 10.1 above shall not apply if the respective confidential information can be proven:
- a) are or become generally known without the Customer's involvement, or

- b) was already known to the Customer or is made known by a third party authorised to pass on the information or
- c) is developed by the Customer without the intervention of GFOS and without exploitation of other information or knowledge obtained through the contractual contact; or
- d) must be disclosed due to mandatory statutory provisions or court or official orders.

10.4 The Customer shall be responsible for compliance with all relevant statutory data protection provisions, in particular for the lawfulness of the data disclosure and data processing of personal data of its employees and other data subjects in connection with the provision of services by GFOS. GFOS shall process the personal data of the Customer only within the scope of the contractually owed service provision and in accordance with the provisions of data protection law.

10.5 The Parties shall process personal data in compliance with the applicable provisions on data protection, in particular Regulation (EU) 2016/679 (General Data Protection Regulation).

10.6 With regard to personal data of the Customer, GFOS shall comply with the relevant statutory data protection provisions. Personal data of the Customer shall be collected, stored, processed and used by GFOS if, to the extent and for as long as this is necessary for the establishment, performance or termination of the IT service contract with the Customer. Further collection, storage, processing and use of personal data of the Customer shall only take place if a legal provision requires or permits this or the Customer has consented. The Customer is aware that in order to carry out pre-contractual measures and fulfil the contract with the Customer, the collection, processing and use of the contact data of the Customer's contact persons (name, e-mail addresses, etc.) is required on the basis of point b) of Art. 6(1) GDPR. GFOS is in

particular entitled to transfer the data to third parties if and insofar as this is necessary for the implementation of pre-contractual measures and fulfilment of the contract (e.g. for delivery, invoicing or Customer support) in accordance with point b) of Art. 6(1) GDPR or fulfilment of a legal obligation within the meaning of point c) of Art. 6(1) GDPR. GFOS will also forward this data to third parties (e.g. debt collection companies) for the purpose of enforcing claims in accordance with Art. 6 Para. 1 lit. b) and/or f) GDPR.

10.7 The data protection information of GFOS is available at <https://www.gfos.com/en/privacy>.

10.8 Insofar as GFOS processes personal data on behalf of the Customer within the framework of the fulfilment of the IT service contract, GFOS shall only process the personal data within the framework of the contractually owed service provision or other written instructions of the Customer and in accordance with the provisions of data protection law. The parties shall specify the details of the commissioned processing in a separate "Agreement on the Processing of Personal Data on Behalf". This agreement shall take precedence over the provisions of these GTC IT Services in its scope of application.

#### **§ 11 Reservation of self-delivery, force majeure and other hindrances**

11.1 If, for reasons for which GFOS is not responsible, GFOS does not receive the IT services of GFOS's subcontractors required for the provision of the service owed by GFOS, or does not receive them correctly or in good time, or if events of force majeure occur, despite proper and sufficient coverage prior to the conclusion of the contract with the Customer, GFOS shall inform the Customer in good time in writing or in text form. In this case GFOS shall be entitled to postpone the IT services for the duration of the hindrance or to withdraw from the contract in whole or in part on account of the part not yet fulfilled, insofar as GFOS has complied with the aforementioned duty to

inform. Cases of force majeure are in particular strikes, lockouts, war, official interventions, epidemics and pandemics as well as their unforeseeable effects, energy and raw material shortages, cyber attacks, transport bottlenecks through no fault of GFOS, operational hindrances through no fault of GFOS - e.g. due to fire, water and machine damage - and all other hindrances which, viewed objectively, have not been culpably caused by GFOS.

11.2 If a performance date has been bindingly agreed and is exceeded due to events according to § 11.1, the Customer shall only be entitled to terminate the contract due to the part not yet fulfilled after the fruitless expiry of a reasonable grace period if it is objectively unreasonable for it to continue to adhere to the contract and the event according to § 11.1 has already lasted longer than 2 months. Further claims of the Customer, in particular claims for damages, are excluded in this case. The Customer shall be obliged to pay for IT services provided up to that point in accordance with what has been agreed in this respect.

#### **§ 12 Term and termination, written form, place of performance, place of jurisdiction, applicable law**

12.1 If the duration of the IT service contract is neither agreed nor can be inferred from the nature or purpose of the IT services, it may be terminated in whole or in part by either party with three months' notice to the end of a calendar month, but at the earliest to the end of a minimum contract period agreed in the IT service contract. A different period of notice may be agreed in the IT service contract. In addition, the IT service contract may be terminated in whole or in part by either party for good cause - without observing a notice period - within a reasonable time from knowledge of the reason for termination. Good cause exists if facts are given on the basis of which the terminating party can no longer be expected to continue the contract, taking into account all circumstances of the individual case and weighing up the interests of the contracting parties. If the good cause consists in the breach of a contractual obligation, the

termination is only permissible after the unsuccessful expiry of a deadline set for remedial action or after an unsuccessful warning, unless a notice of termination is given in accordance with section 314 in conjunction with section 323 para. 2 BGB. In the event of termination for good cause, GFOS shall be entitled to remuneration for the IT services provided on the basis of the IT service contract until the termination takes effect. However, the remuneration shall not apply to those IT services for which the Customer demonstrates that they are of no interest to him due to the termination.

- 12.2 The place of performance for all contractual obligations shall be the registered office of GFOS.
- 12.3 GFOS shall be entitled at any time to transfer the rights and obligations arising from this contract to affiliated companies within the meaning of sections 15 ff. of the German Stock Corporation Act ("AktG").
- 12.4 All agreements, ancillary agreements, assurances and amendments to the contract must be in writing. This also applies to the waiver of the written form agreement itself. Insofar as written form is prescribed in these GTC IT Services, it shall also be complied with by transmission by fax or e-mail, digital/electronic signatures and signatures (e.g. Docu-Sign). The priority of an individual agreement (section 305b BGB) remains unaffected.
- 12.5 The place of jurisdiction for all legal disputes between the parties arising from or in connection with the IT service contract shall be Essen, Germany, insofar as this is legally permissible; GFOS shall, however, also be entitled to sue the Customer at his general place of jurisdiction. The above agreement on the place of jurisdiction shall not apply if a different, exclusive place of jurisdiction results from the law.
- 12.6 All legal relationships between the Customer and GFOS shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of the UN

Convention on Contracts for the International Sale of Goods.

- 12.7 These GTC have been drafted in German and English. In the event of any inconsistency between the German and English version of the GTC, the German version shall be binding.

## B. Additional conditions for Contractual IT services

Status: January 2023

### § 1 Scope of application

These Supplementary Terms and Conditions for IT Services under a Contract for Work and Services (hereinafter referred to as "**Supplementary** Terms and Conditions") shall apply in addition to the aforementioned GTC IT Services if GFOS owes a concrete performance success in accordance with the IT Service Contract within the scope of the provision of the IT Services and in this respect contract for work and services law applies, e.g. in the case of customised hardware and/or software adaptations within the scope of a hardware and/or software implementation. In the event of contradictions between the GTC IT Services and these Supplementary Terms and Conditions, the Supplementary Terms and Conditions shall take precedence.

### § 2 Scope of services

- 2.1 The IT services to be provided by GFOS as well as the work results to be achieved shall be specified in the IT service contract.
- 2.2 Insofar as IT services are provided on the Customer's premises, the Customer shall not be authorised to issue instructions to the consultants employed by GFOS. The consultants shall not be integrated into the Client's operations. The Customer can only give instructions to the GFOS contact person designated in the IT service contract for project coordination, not directly to the individual consultants.
- 2.3 The Customer shall bear the risk that the IT services agreed within the framework of the IT service contract as well as the work results to be achieved meet his requirements. In the event of doubts, he shall seek advice in good time from GFOS consultants or from expert third parties.

- 2.4 If GFOS provides IT services beyond the scope of the IT service contract in agreement with the Customer (text form is sufficient), the regulations and conditions of the IT service contract shall apply accordingly to the IT services provided in this respect.
- 2.5 Unless explicitly agreed otherwise in the IT service contract, the project language shall be German; the project documentation shall also be in German. Insofar as the creation or adaptation of software is owed within the scope of the service, any owed documentation of the code can also be carried out "inline", i.e. comments in the code directly.

### § 3 Obligations of the Customer to cooperate

In addition to § 4 of the GTC IT Services, the following additional obligations to cooperate apply to the Customer:

- 3.1 Insofar as this is necessary within the framework of the provision of services, the Customer shall grant the consultants employed by GFOS direct or indirect access to software and IT systems as well as a simple right of use, limited in time to the term of the IT service contract, for the contractual and intended use of systems and applications of the Customer. It is the responsibility of the Customer to ensure the proper operation of the necessary software and IT systems. Insofar as the Customer provides GFOS with content, materials, data and information for the provision of services, the Customer shall ensure that these are free of third-party rights which could conflict with the provision of services by GFOS.
- 3.2 The client shall take appropriate precautions in the event that IT services and/or work results are subject to malfunctions (e.g. by means of data backups, fault diagnosis, regular checks). Insofar as no express written indication is given by the client in individual

cases, the consultants employed by GFOS may assume at all times that all data with which they may come into contact is backed up.

#### § 4 Acceptance

- 4.1 Acceptance shall take place after checking the work results to be produced within the scope of the IT Services. For this purpose, GFOS may demand a written acceptance declaration and/or an acceptance protocol signed by the Customer.
- 4.2 If (partial) work results are defined in an IT service contract, GFOS may make each (partial) work result available for acceptance.
- 4.3 The Customer shall inspect (partial) work results provided for acceptance immediately after notification of completion, but within a maximum of ten (10) working days (hereinafter referred to as the "**acceptance period**"), and either declare acceptance in writing and/or notify any defects with a precise description. If the Client does not declare acceptance within the Acceptance Period or uses the work results without giving notice of defects, the (partial) work result shall be deemed accepted. Insignificant defects do not entitle the Customer to refuse acceptance. The productive deployment, commissioning or use of (partial) work results by the Customer shall in any case be deemed acceptance of the respective (partial) work results.
- 4.4 If the Customer notifies GFOS of any defects found within the acceptance period, GFOS shall assign them to one of the following defect classes:

**Defect class 1:** The (partial) work result is afflicted with a defect that makes usability impossible or unreasonably impairs it.

**Defect class 2:** The (partial) work result has a defect that restricts the usability more than insignificantly, although there is no defect of defect class 1.

**Defect class 3:** The (partial) work result has a defect that only insignificantly restricts the usability.

- 4.5 The Customer may refuse acceptance if defects of defect class 1 exist or if several defects of defect class 2 together lead to effects of defect class 1.
- 4.6 GFOS shall rectify the defects notified in accordance with § 4.3 of these supplementary conditions within a period appropriate to the category of the defect and - in the event of refused acceptance - shall make the work result available to the client again for acceptance. §§ 4.3 to 4.5 of these supplementary terms and conditions shall apply accordingly to this and any further acceptance.

#### § 5 Warranty for work performance

- 5.1 GFOS warrants that the work results produced within the scope of the IT services have the expressly agreed quality features and that the granting of the rights of use agreed in § 7.3 of the GTC IT services to the client is not opposed by any third party rights. Insofar as no express quality has been agreed, the warranty refers to the fact that the work results are suitable for the contractually presumed, otherwise usual use and have a quality which is usual for work results of this type and which the Customer can expect for work results of this type.
- 5.2 The Customer shall notify GFOS without delay of any defects occurring, with a precise description of the problem and the information useful for rectifying the defect. In the case of proven material defects, GFOS shall provide warranty by subsequent performance in such a way that GFOS, at its own discretion, provides the Customer with a new, defect-free state of the work results or rectifies the defect. In the case of proven defects of title, GFOS shall provide warranty by means of subsequent performance in that GFOS shall provide the Customer with a legally flawless opportunity to use the work results or, at the option of GFOS, replaced or modified work results of equivalent value. The Customer must accept a new status of the work results (e.g. update of a software) if the



contractual functional scope is maintained and the acceptance is not unreasonable. The urgency of the fault rectification shall be determined by the degree of operational hindrance.

- 5.3 If subsequent performance finally fails after the fruitless expiry of two reasonable periods of grace to be set by the Customer, the Customer may terminate the IT service contract, declare withdrawal or reduce the remuneration. In the case of insignificant errors or deviations, however, withdrawal from the IT service contract is excluded. GFOS shall provide compensation for damages or reimbursement of futile expenses due to a defect within the limits set out in § 8 of the GTC IT Services.
- 5.4 The warranty period for work performances is one year from acceptance. This does not apply to claims for damages arising from a guarantee, the assumption of a procurement risk, injury to life, or health, intentional, grossly negligent or fraudulent conduct.